

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MOHAMED JOHN AKHTAR and LA BUCA
RESTAURANT, INC. d/b/a SWING 46 JAZZ
AND SUPPER CLUB,

Plaintiff

-against-

23-CV-6585 (JGLC)(VF)

ERIC ADAMS, Mayor of the City of New
York, ROHIT T. AGGARWALA, New York
City Department of Environmental Protection,
ERIC I. EISENBERG and JOHN AND JANE
DOES ONE THROUGH THIRTY,

Defendants

**ERIC EISENBERG'S LETTER-MOTION FOR SECOND EXTENSION OF TIME TO
REPLY IN SUPPORT OF MOTION TO DISMISS**

Dear Magistrate Judge Figueredo,

I, Eric Eisenberg, write, pursuant to Your Honor's Individual Rule of Practice I(e) seeking a 28-day extension of time to reply to Plaintiffs' Opposition (D.I. 34) to my Motion to Dismiss, (D.I. 24). Currently, after a first extension was granted, the reply is due on February 29, 2024. The requested deadline is March 28, 2024. I have made one previous request for adjournment or extension, while Plaintiff has made two in connection with my Motion to Dismiss, all of which were granted.

I seek this extension for two main reasons, which were explained to counsel for both Plaintiffs and the City Defendants.

First, the prior extension granted by this Court was in part for me to obtain a response to my FOIL request to OATH which I believe may further indicate the extent of communications between OATH and Plaintiffs or their representatives. This would tend to further contradict facts newly alleged in Plaintiffs' Opposition as to OATH being a "phantom" that does not respond to correspondence. I continue to await a substantive response from OATH to that FOIL request. I have twice written to counsel for the City

Defendants, including Ms. Zilkha who I understand is an attorney representing OATH in at least one other matter, inquiring as to the status of the FOIL response, but I have not received an update in response to either inquiry.

Second, in light of the grant on February 23, 2024 of a 30 day extension of time to Plaintiffs to oppose the City Defendants' Motion to Dismiss, I do not believe my requested extension would appreciably delay the completion of briefing on the Motions to Dismiss and thus would not appreciably delay final resolution of this matter.

As per the correspondence attached as Exhibit 1 hereto, Plaintiffs' counsel did not consent to my request for this 28-day extension, because he has allegedly "lost count of the number of times [I] have refused to consent to any reasonable request for an adjournment. So the answer is no." I note this is an odd position, given that Plaintiffs refused to consent to my prior request for a 30-day extension, offering only a 15-day extension which would have given little hope of receiving these FOIL documents in time.

Additionally, Plaintiffs' counsel, despite the fact that the FOIL documents I await from OATH relate to Plaintiffs' misrepresentations in its Opposition as to the availability of administrative remedies (and thus relate to ripeness and this Court's subject matter jurisdiction, which are subjects of my Motion to Dismiss), further stated that "the relief that [I] request has nothing to do with the matter at bar."

Additionally, despite me explaining the instantly requested extension would not appreciably delay completion of briefing on the two pending Motions to Dismiss in light of the grant of a 30-day extension to Plaintiffs yesterday to file an Opposition to the City Defendants' Motion to Dismiss, Plaintiffs' counsel further indicated that "[I] have complained numerous times to the court that [I am] opposed to adjournments because [I] 'do not want the case delayed.'"

Plaintiffs' counsel further strongly suggested I retain counsel.

I have not yet received a response to my extension request from counsel for the City Defendants.

I do not believe there are currently any appearances scheduled before the Court.

Dated (and executed in): Miami, Florida
February 24, 2024

Respectfully submitted,

s/ Eric Eisenberg
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cc: all parties (by ECF); Encl. (Exhibit 1 – Correspondence with Mr. Iannarelli)